

Message Text

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ACTION EB-07

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TO SECSTATE WASHDC 3439

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E.O. 11652: N/A

TAGS: EAIR, UK

SUBJECT: CIVAIR: SEABOARD'S LEGAL PROBLEMS OVER MILI-
TARY AIRLIFT COMMAND CHARTERS

1. SUMMARY: SEABOARD'S UK REPRESENTATIVE, CLIFFORD FOSS, A UK CITIZEN, IS UNDER INVESTIGATION BY THE CIVIL AVIATION AUTHORITY (CAA) AND HAS BEEN INFORMED HE WILL RECEIVE A SUMMONS THE NEXT 4 OR 5 WEEKS TO APPEAR AS DEFENDENT IN COURT IN GLASGOW, SCOTLAND, PERHAPS IN LATE JUNE OR EARLY SEPTEMBER, FOR CRIMINAL VIOLATION OF THE UK AIR NAVIGATION ORDER OF 1974 (ARTICLE 79). SEABOARD, AND FOSS PERSONALLY AS SEABOARD'S UK REPRESENTATIVE, IS CHARGED WITH OPERATION OF A SERIES OF 21 CHARTERS FOR THE US MILITARY AIRLIFT COMMAND (MAC) INTO AND OUT OF PRESTWICK, SCOTLAND, BETWEEN 8 FEB. 1975 AND 17 APRIL 1976, WITHOUT OBTAINING PERMISSION FOR THE FLIGHTS AS REQUIRED BY ARTICLE 79 AS NOTED ABOVE. END SUMMARY.

2. BACKGROUND: FROM FEB. 1975 TO APRIL 1976, SEABOARD OPERATED FOR MAC 21 CHARTERS CARRYING PASSENGERS AND THEIR BAGGAGE INTO AND OUT OF PRESTWICK AIRFIELD IN SCOTLAND. MOST OF THESE FLIGHTS WERE CONDUCTED IN CONNECTION WITH OPERATIONS BETWEEN MCGUIRE AIR FORCE BASE AND

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FRANKFURT, RHEIN/MAIN. LOCAL ARRANGEMENTS FOR THE FLIGHT WERE MADE THROUGH SEABOARD'S PRESTWICK AGENTS (AIR CANADA). THE CARRIER DID NOT REQUEST AUTHORITY TO OPERATE CHARTERS FROM THE DEPT. OF TRADE AS REQUIRED UNDER ARTICLE 79 OF THE AIR NAVIGATION ORDER OF 1974 SINCE IT WAS ASSUMED, INCORRECTLY SEABOARD ADMITS, THAT SUCH AUTHORITY WAS NOT REQUIRED FOR MAC CHARTERS.

SEVERAL MONTHS AFTER THE COMPLETION OF THE SERIES OF MAC CHARTERS IN QUESTION, THE DEPT. OF TRADE WROTE TO SEABOARD ON JULY 6, 1976, POINTING OUT THAT IT APPEARED THE FLIGHT HAD BEEN OPERATED WITHOUT PROPER AUTHORIZATION AND REQUESTED SEABOARD'S EXPLANATION. SEABOARD RESPONDED TO THIS LETTER JULY 13, 1976, STATING IT HAD BEEN IN ERROR, APOLOGIZED FOR THE OVERSIGHT AND AGREED TO FOLLOW CORRECT PROCEDURES IN THE CASE OF FUTURE MAC CHARTERS. NOTHING ELSE HAPPENED IN RESPECT OF THE ISSUE UNTIL MAR. 1977 WHEN AN INVESTIGATIVE OFFICER FROM THE UK CIVIL AVIATION AUTHORITY (CAA) CONTACTED MR. FOSS TO DETERMINE IF HE WAS THE PROPER PERSON TO BE SERVED WITH A SUMMONS TO APPEAR IN COURT IN SCOTLAND WHERE SEABOARD'S UK REPRESENTATIVE WOULD BE PROSECUTED FOR THE VIOLATION. SUBSEQUENTLY, INVESTIGATORS FROM THE OFFICE OF THE PROCURATOR FISCAL FOR EDINBURGH (THE ROUGH EQUIVALENT OF A UNITED STATES DISTRICT ATTORNEY) MET WITH MR. FOSS AND SEABOARD'S ATTORNEYS MAY 2. AT THAT MEETING, MR. FOSS WAS TOLD HE COULD EXPECT TO RECEIVE A SUMMONS IN THE NEXT 4 OR 5 WEEKS TO APPEAR IN COURT IN SCOTLAND (PROBABLY GLASGOW). THEY WERE TOLD THE CASE WOULD COME TO COURT MOST LIKELY IN LATE JUNE OR EARLY SEPTEMBER.

3. COMMENT: THERE IS LITTLE DOUBT THAT SEABOARD SHOULD HAVE BEEN AWARE OF THE REQUIREMENTS OF ARTICLE 79 AND THE NEED TO OBTAIN AUTHORIZATION FROM THE DEPT. OF TRADE FOR CHARTER FLIGHTS. NONETHELESS, SUCH AUTHORITY FOR US GOVERNMENT SPONSORED OPERATIONS LIKE MAC CHARTERS IS ROUTINELY ISSUED WHEN REQUESTED. THIS IS SO ROUTINELY LIMITED OFFICIAL USE

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HANDLED, THAT DEPT. OF TRADE ISSUES, ON REQUEST, 3 MONTH BLANKET CLEARANCES WITH ONLY THE REQUIREMENT THAT THE CARRIER REPORT FLIGHTS WITHIN 7 DAYS OF OPERATION. ALSO, SEABOARD INFORMS US IT NEVER THOUGHT IT NECESSARY TO OBTAIN PRIOR PERMISSION FOR MAC CHARTERS NOR HAD IT DONE SO FOR SIMILAR OPERATIONS OVER THE PAST 20 YEARS. IN ADDITION, SEABOARD'S ARGUMENT THAT ITS FAILURE TO OBTAIN NECESSARY AUTHORIZATION WAS DUE TO A COMBINATION OF AN OVERSIGHT AND MISUNDERSTANDING OF THE NEED FOR PERMISSION IN THE CASE OF MAC CHARTERS IS PERSUASIVE. IT SEEMS HIGHLY UNLIKELY THAT THE CARRIER WOULD PURPOSELY TRY TO EVADE UK RULES ON A PROJECT OPERATED IN AND OUT OF A PUBLIC AIRPORT WHICH CONTINUED OVER A PERIOD OF MORE THAN A YEAR AND INCLUDED SOME 21 SEPARATE FLIGHTS. IT WOULD SEEM CLEAR TO ANYONE THAT THE UK AUTHORITIES WOULD EVENTUALLY BECOME AWARE OF SUCH AN EXTENSIVE OPERATION AND, IF IT WERE NOT IN ACCORD WITH PROPER PROCEDURES, THE CARRIER COULD SURELY EXPECT TO BE CALLED TO ACCOUNT FOR ITS ACTIONS.

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4. FROM THE TIMING OF THE UK'S ACTION ON THIS MATTER, IT MAY POSSIBLY BE RELATED TO THE COURT ACTION BEING TAKE AGAINST BRITISH AIRWAYS (BA) BY THE CIVIL AERONAUTICS BOARD IN RESPECT OF THE UNAUTHORIZED USE BY BA OF CONTRAC CARGO RATES AFTER THEY WERE SUSPENDED BY CAB. FOR THE BRITISH TO BRING CRIMINAL PROCEEDINGS (400 POUND FINE AND UP TO 2 YEARS IMPRISONMENT FOR EACH VIOLATION) AGAINST SEABOARD FOR A TECHNICAL VIOLATION OF THE UK RULES WHEN AUTHORIZATION FOR THE MAC FLIGHTS WOULD HAVE BEEN GIVEN FOR THE ASKING, SEEMS A RESPONSE OUT OF ALL PROPORTION TO THE OFFENSE COMMITTED.

5. THE EMBASSY HAS NOT YET APPROACHED UK GOVERNMENT (CAA AND DEPT. OF TRADE) ON THIS MATTER. WHILE SEABOARD SEEMS TO HAVE BEEN IN TECHNICAL VIOLATION OF THE UK'S RULES (ARTICLE 79), PAST AND SUBSEQUENT EXPERIENCE INDICATE THE UK GOVERNMENT HAS LITTLE INTEREST IN SUCH NON-COMMERCIAL OPERATIONS AS MAC CHARTERS WHERE THE PASSENGERS AND/OR FREIGHT CARRIED ARE, IN ANY EVENT, NOT AVAILABLE TO BRITISH AIR CARRIERS. SEABOARD'S ATTORNEY HAS TOLD US IT WOULD AID HIS DEFENSE OF MR. FOSS AND SEABOARD IF IT WERE

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POSSIBLE TO CITE SOME MILITARY AGREEMENT BETWEEN THE US AND UK, OR UNDER NATO, WHICH MIGHT INDICATE THAT THE US GOVERNMENT HAS AUTHORITY TO MOVE MILITARY PERSONNEL INTO AND OUT OF THE UK IN CONNECTION WITH JOINT DEFENSE ACTIVITIES.

6. ACTION: WE INTEND TO DISCUSS THIS ISSUE WITH DEPT. OF TRADE AND CAA. THE DEPARTMENT'S ADVICE ON THE QUESTION OF APPLICABLE MILITARY AGREEMENTS AS NOTED PARA (5) ABOVE WOULD BE APPRECIATED.

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